1945 K **File No.** O. Local Bds 45

Legal Dept

A **BRANCH**

Subject:— Opinions under the Bombay Local Boards Act 1923

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Gen. 194

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C O N T E N T S

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EKN.11/7/

Office of the R.L.A.

The position of councillors in regard to local fund is in law that of trustees and as trustees they are bound to exercise over the turst property the same degree of caution and care as a man of ordinary prudence would exercise in th case of his own property. The office of the District Local Board, Kolaba is at present located at Pen in a hired building on a rental of Rs.38 per month. The Board propose to contruct a building of its own at a cost of Rs.20,000. Ordinarily there can be no legal objection to a local Board constructing a building for housing its own office. It is true that the financial position of the District Local Boar Kolaba is not very satisfactory, that there is no pressing need for the construction of an office building and that construction in war time must necessarily be very expensive There are no doubt circumstances which render the Board's proposal an imprudent and bad investment. But considering that the land upon which the building is to be constructed h has been offered in gift to the Board it is doubtful if the Board's proposal can be looked upon as an extravagantly bad investment to justify action under section 125 of the Bombay Local Boards Act,1923. In the event of litigation it might perhaps be difficult to show to the Court's satisfaction that the Board's proposal was likely to cause injury to the public.

Ld/-
P.N.M.
28/2/45.

Remembrancer of Legal Affairs.

U.R. to G.D.,No.1637,dated the 1st March 1945.

FKN.11/7/

Office of the R.L.A.

The R.L.A. has been requested to advise whether the penal interest of Rs.144-3-11 realised by the District Local Board, Ratnagiri during 1942-43 on overdue instalments of contracts of ferries vested in the said Board and managed by it should be credited to the local fund or to provincial revenue.

Clause (d) of section 75 of the Bombay Local Boards Act, 1923 provided that the net proceeds of the public ferries establishment under the Bombay Ferries Act, 1868 and the penalties inflicted and levied under the said Act should be paid into the local fund. Interpreting the expressions "net proceeds" and "penalties" the R.L.A. observed in his opinion No.4447 dated the 4th August 1936 that interest levied on over due instalments of ferry receipt is neither proceeds of the ferry nor a penalty inflicted or levied under the Ferries Act, In his opinion No.5867 dated the 19th July 1938 the R.L.A. opined that his opinion No.447 dated the 4th August 1936 still held good since clause (d) of section 75 though delted by the Government of India (Adaptation of Indian Law) Order, 1937, was operative till March 31, 1939, by virtue of paragraph 4 of the Government of India and Burma (Transitory Provisions) Order, 1937. He further observed that interest on overdue instalments would not be either proceeds or rent or profit of the ferry within the meaning of clause (d) or (e) of section 75 of the Bombay Local Boards Act. That part of his observation that interest on overdue instalments would not be proceeds or rent or profits within the meaning of clause (e) of section 75 was obiter since the facts of the case related to the disposal of interest on overdue instalments before clause (d) of section 75 ceased to be operative, Consequently the question whether or not interest on overdue instalments was obiter since the facts of the case related to the disposal of interest on overdue

instalments.....

instalments was "rents and profits" within the clause (e) of section 75 was not necessary for the purposes of that opinion nor were the implications of the provisions of that clause fully considered.

Clause (2) of section 75 provides that all rents and profits accuring from property (including ferries) vested in a local board. Since interest on overdue instalments does not accure from property, strictly speaking, it is neither rent nor profit within the meaning of clause (e). However, as observed by Banerjee and Gridit JJ.In Raj Narain Mittar vs.Panna Chand Singh (30 Cal.213 at p.215) a stipulation for payment of interest upon arrears is an ordinary incident of a tenancy in this country and as a rule it attaches to tenancy, a landlord is entitled to enforce his claim for arrears of rent and interest thereon under clause (1) of section 108 of the Transfer of Property Act Mulla's Transfer of Property Act, (p.620). That being the legal position, it appears that District Local Board, Ratnagiri is entitled to interest on overdue instalments of contracts of ferries under clause (e) of section 75 of the Bombay Local Boards Act.

Id/-

P.N.M.
26-3-45.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.2376,dated the 27th March 1945.

EKN.11/7/

Office of the R.L.A.

Khan Bahadur N.R.Kazi and Mr.V.K.Shevade who have been appointed joint administrators under section 131(a) of the Bombay Local Boards Act,1923 have to exercise jointly all the powers under the Act (d.R.L.A's opinion No.1080 , dated the 9th February 1944). The presumption made by the Examiner, Local Audit Department in his letter at page 19 ante is correct.

Id/-
P.N.P. 23/6/45

Remembrancer of Legal Affairs.

U.F. to C.D.,No.4753,dated the 25th June 1945.

EKN.11/7/

Office of the R.L.A.

It appears that in order to enable the District Local Board, Broach to finance its scheme of compulsory primary education in the Borach and Panch Mahals District, Government directed in G.R.G.D.No.9560 dated 1-4-1944 that an increased local fund cess of 1½ annas should be levied on every rupee of land revenue as prescribed in section 93(1) of the Bombay Local Boards Act,1923 with effect from 1-4-1944 It is however now pointed out that the dates of instalments for payment of land revenue in the Sub-Division are 5th March and 5th April and that Khatedars are permitted to pay both instalments together or make over payments before the date of the second instalment or delay payment of the first instalment beyond 1st April in certain circumstances. This being so, those who paid land revenue before 1st April 1944 escaped the liability to pay the increased cess, while those who paid the former on or after 1.4.1944 had to pay the cess. In the circumstances the Collector and the Commissioners consider this unfair and have observed that equitably and legally the increased cess should have been levied with effect from 1-8-1944. The Board is unwilling to forego the cess from April to July 1944 and is not prepared to pass any resolution requesting Government to levy the cess with effect from 1-8-1944. The question raised for the consideration of the R.L.A. is whether the levy of the cess at the revised rate from 1-4-1944 was legal.

2. Section 93(1) of the Bombay Local Boards Act, 1923 provides that the Provincial Government shall levy on the conditions and the manner thereinafter described, a cess at the rate of one anna or, on an

application.....

application to the District Local Board to which the is payable made in pursuance of a resolution of the board passed at a special meeting called for the purpose, an increased cess at the rate not exceeding two annas, on every rupee of —

(a) every sum payable to the Provincial Government as ordinary land revenue except sums payable on account of any charges mentioned in Schedule A, and except sums payable on account of any charge which may be notified by the Provincial Government in that behalf-

(b).....

(c).....

Section 139 of the Land Revenue Code Provides that the land revenue shall be leviable on or at any time after the first day or the revenue year for which it is due. Under section 146 land revenue shall be payable at such times, in such instalments, to such persons and at such places as may from time to time be determined by the orders of the Provincial Government. "Revenue Year" as defined in section 3(22) means" the period from the exclusive of, the thiry-first July of one callendar year until and inclusive of, the thirty-first July in the next calendar year." It is therefore clear from these provisions that the land revenue though leviable on or after 1st August becomes payable at such times and in such instalments as shall be determined by the orders of the Provincial Government. It appears from the R.D. office note at p.19 ante that the dates of the instalments for payment of land revenue in the Broach Sub-Division of the Broach and Panch Mahals District are 5th March and 5th April. The second instalment of the land revenue in that sub-Division was therefore payable on 5th April 1944, and that was the land revenue payable within the meaning of clause (a) of section 93(1) of the Bombay

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Local Boards Act. Consequently the levy of the cess on that instalment of the land revenue ordered by Government by G.R.G.D.No.9560 dated 1-4-1944 was therefore legal. It is true that the levy of the cess with effect from 1-4-1944 may have prejudicially affected those landholders who had defaulted in payment of the first instalment, or benefited those persons who may have paid both the instalments before 1st April 1944. But these considerations do not appear to be sufficient to hold that the cess was illegal. It is true that-

> "It is the very essence of taxation that it should be levied with equality and uniformity, and to this end there should be some system of apportionment." (Cooley's Constitutional Limitations, Vol.II, p.1040).

> "It is not essential to the validity of taxation that it be levied according to the rules of abstract justice. It is essential that the legislature keep within its proper sphere of action and do not impose burdens under the name of taxation which are not taxes in fact; and its decision as to what is proper just and politic, must then be final and conclusive Absolute equality and strict justice are unattainable in tax proceedings." (See Colley's Constitutional Limitations, Vol.II. p.1084).

This principle of equality and uniformity does not appear to have been infringed in the present case. It has affected uniformly and equally all those who had to pay the land revenue and had not paid before 1st April 1944. Consequently it is very difficult to hold that the levy of the cess in the present case was illegal.

2. In pursuance of the G.R.G.D. No.9560 dated 1-4-1944 the cess has already been recovered and paid to the District Local Board. In recovering the cess Government acts merely as a statutory agent of the District Local Board. That being so, it is impossible for Government to order repayment of the cess by the District Local Board. The modification of the G.R. or its cancellation will not give any legal authority to Government to recover the

cess.....

cess from the District Local Board for the purpose of paying it back to the landholders. If the cess was illegal, it was open to the landholders to refuse to pay it; and if they have any grievance on the ground that the cess was wrongly or illegally recovered by Government it is open to them to claim it back from the Local Board by due process of law. In the circumstances, it appears desirable that Government should leave the matter as it is and direct the aggrieved persons to go to Court for relief.

Ld/-

P. .M.

2/8/45.

Remembrancer of Legal Affairs.

U.R. to G.D.No.5781, dated the 4th August 1945.

EKN.11/7/

Office of the R.I.A.

Under section 131(a) of the Bombay Local Boards Act,1923,Khan Bahadur Kazi and Mr.Shevade who have been appointed joint administrators of the superseded District Local Board,Nasik, can exercise and perform all the powers and duties of the Board and may appoint a person or a committee and delegate to them all the powers which a local board could have delegated to a person or committee to perform the duties which a board could have delegated. Sections 36,37&38 provide for the appointment of a committee of committees or any person i.e.any member or honorary or stipendiary officer by a local board to exercise and perform its powers and duties, If a board could appoint a member & delegate to him its powers, I do not think there would be any legal objection to Khan Bahadur Kazi and Mr.Shevade who canstitute the Board jointly appointing one of themselves and delegating to the person so appointed all or any of the powers which the Board could have delegated to a person or committee and empowering him to perform the duties which a Board could have delegated. All that is necessary is that the delegation and empowerment should have the sanction of both. Consequently they should pass a resolution delegating to Mr.Shevade all or any of the powers of the Board and empowering him to perform the duties thereof whereupon Mr.Shevade alone should be competent to exercise and perform those powers and duties.

Id/-
P.N.M.
10/8/45,

Remembrancer of Legal Affairs.

U.R. to G.D.No.5997,datdd the 13th Aggust 194'

EKN.11/7/

Office of the R.L.A.

With a view to preventing the evasion of payment of octroi at the sea coast nakas, the President, District Local Board, Ratnagiri has proposed that Government should fix the revenue limits of the Ratnagiri District under section 7 read with section 37 of the Bombay Land Revenue Code to enable the Board to levy octroi duty on goods coming within the revenue jurisdiction of the District. The Under Secretary R.D. doubts "whether it is legal or feasible in respect of this one District to issue a notification under section 7 read with section 37 which deals with an entirely different set of circumstances." The R.L.A. is requested to advise whether the view taken by the Under Secretary, R.D. is correct, and if so, suggest whether there is any way of solving the Board's legal difficulty.

It appears that the present reference is a sequel to the decision of the Bombay High Court in Emperor v. Dema Mahadu 37 B.L.R. p;790 The facts in that case were as follows.:-

> "The accused who was the tindal (master of country ship), carried goods consigned to merchants in Jaitapur and Rajapur, two ports on a creek in the Ratnagiri District . The Boart arrived at the port of Jaitpur, which is at the mouth of the creek. The goods consigned to Jaitapur traders were landed on payment of octroi duty in accordance with the rules framed by the District Local Board of Ratnagiri, under section 100 of the Bombay Local Boards Act, 1923. There being no separate octroi naka for the Rajapur post, which is about eighteen miles further up the creek, the nakedar at Jaitapur demanded, under rule 8 of the rules, octroi duty on goods destined for Rajapur, but the accused declined to pay it. When the nakedar proceeded to seize part of the cargo he was resisted by the accused. The accused was thereupon convicted of an offence punishable under section 183 of the Indian Penal Code."

On revision, the High Court held, reversing the conviction.

> "(1) that the prosecution had not established either (a) that the jurisdiction of the District Local Board to impose taxes extends to goods on board the ship before they are landed, or (b) that the Local Board had power to make rule 8 providing for the cancellation of the octroi in the same manner which was provided in the Act in the case of a toll by section 116.
>
> (2) that even under rule 8 it was doubtful whether goods brought on board a ship to a port where there was a naka but destined for another port could be said to be brought to the naka so as to attract the operation of t'

Since that decision, section 116 of the Bombay Local Boards Act 1923 has been amended and the words "octroi or" have been inserted between the words "any" and "toll" with the result that the person appointed by a District Local Board to collect octroi has now power to seize goods on non-payment of octroi. That being so, the ground 1(b) of the grounds on which the decision in Emperor v.Dema Mahadu rested no longer subsists. But the main ground 1(a) viz., the absence of jurisdiction of the District Local Board to impose taxes on goods on board the ship before they are landed still remains. Under section 99 of the Bombay Local Boards Act, 1923, a District Local Board is not entitled to levy tax which the Provincial Legislature has no power to levy under the Government of India Act, 1935 Entry 49 in the Provincial Legislative List II in Schedule VIII to the Government of India Act provides for the levy of cesses on the entry of goods into a local area for consumption use or sale therein. If the goods enter the limits of a District Local Board for consumption, use or sale therein the levy of octroi would certainly be justifiable. But so long as the goods are on board the ship, it is difficult to say that the goods are brought within the limits of the District Local Board for consumption, use or sale therein, for, such goods may be in transit. It was apparently for that reason that the High Court held in Emperor v.Dema Mahdu that the District Local Board had no jurisidction to impose taxes on goods on board the ship. That being the legal position, it would not be competent for the District Local Board, Ratnagiri to levy octroi duty on goods on board the ship before they are landed and the fixing of the revenue limits of the District cannot solve the difficulty; and in fact in Emperor v.Dema Mahadu the creeks which the District Local Board, Ratnagiri wants to include in its jurisdiction were assumed to be within its jurisdiction.

Id/-
P.N.P.
9/9/45.
Remembrancer of Legal Affairs.

BKN.11/7/ U.R. to R.D.No.6641 dt. the 12th September 1945.

Office of the R.L.A.

To promote the happiness and prosperity of agriculturists is one of the objects and purposes of the Bombay Local Boards Act,1923,(see clause (j) of section 50 of the Act). The conference of the ryots called by the president of the District Local Board, Dharwar was intended to secure the relaxation of the Gram Levy Scheme and thereby some relief in their distress. Such relief would add to their comfort. Consequently the expenditure on the conference would be permissible under clause (n) of section 50 of the Bombay Local Boards Act.

Sd/P.N.M.

Remembrancer of Legal Affairs.

U.R. to G.D.No.7295,dated 3rd October 1945.

E-II.11/7/